IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13409 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHABHAIJIVRAJBHAI DEVANI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR IM PANDYA ASSTT GOVT PLEADER for Respondent No. 1

MR PJ VYAS for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/10/2000

ORAL JUDGEMENT

#. Heard Mr.J.M.Patel, learned advocate for Mr.A. J. Patel, learned advocate appearing on behalf of the petitioner and Mr.I.M.Pandya,learned AGP appearing on

behalf of the respondent authority No. 1 so also Mr.P. J. Vyas, learned advocate appearing on behalf of the respondent Nos. 2 to 4. The present petition wherein RULE was issued and same was made returnable on 11th July, 1994 and interim relief has been granted on 26th April, 1994.

#. The brief facts giving rise to this petition are as under :-

The petitioner being an agriculturist in the State of Gujarat purchased land bearing Survey No. 552 [block No. 844] admeasuring 2 acres and 39 gunthas situated in village Shilaj of Taluka Daskroi, District Ahmedabad from the respondent Nos. 2 to 4 for total consideration of Rs.42,000/-. The sale was registered on 17th October, 1981 and at that time the petitioner was an agriculturist in village Rangpura, Taluka Kadi of District Mehsana. On the basis of the said sale deed, necessary mutation entry No. 5679 was effected on 17th October, 1981 in village Form No. 6 after verification of the genuineness of transaction of sale. The name of the petitioner was also mutated in village form No. 7 x 12 in respect of the aforesaid land. According to the petitioner, after purchasing the land he invested considerable amount of money, labour and resources with a view to improve the land in question and he continued to cultivate the said land. According to the petitioner after period of 5 years, the petitioner has received notice dated 23rd August, 1984 from the Mamlatdar and ALT, Daskroi while exercising sum motu powers under Section 84-C of the Tenancy Act. In response to the notice issued to the petitioner, the petitioner has appeared before the Mamlatdar and ALT, Daskroi and interalia pointed that he was an agriculturist and he has been cultivating the said land since the date of purchase of the land and necessary mutation entries were also made in the revenue record and therefore, there is no violation of Section 63 read with Section 84-C of the Tenancy Act. The Mamlatdar and ALT, Daskroi has passed order dated 21st September, 1989 and held that the petitioner is not an agriculturist and therefore, Section 63 has been violated and the order has been passed under the provisions of 84-C of the Tenancy Act. The said order of the Mamlatdar and ALT, Daskroi has been challenged by the petitioner before the Deputy Collector in Appeal No. 46 of 1990. The said appeal is rejected on 27th March, 1991 by the Deputy Secretary (Appeals), Ahmedabad. Thereafter, the petitioner has approached the Gujarat Revenue Tribunal by way of revision application No. 631 / 91, wherein the tribunal has passed order

dated 18th October, 1993 setting aside the order passed by the lower authorities and directed to the lower authorities by remanding the matter back to decide the same afresh in accordance with law. The tribunal has remanded the matter back to the Mamlatdar and ALT to decide afresh while setting aside two orders dated 27th March, 1991 and 21st September, 1989. Therefore, being aggrieved of the said order, has challenged the said order by filing the present petition.

#. Mr.Patel, learned advocate appearing on behalf of the petitioner has submitted that without going into merits of the matter only one contention in respect of unreasonable delay in exercising the suo motu powers by the Mamlatdar and ALT under Section 84-C of the Tenancy Act is sufficient to set aside the order in question in the present petition. He submitted that it is undisputed on record that sale deed was executed on 17th October, 1981 and necessary entries were made on the very same day and thereafter, the petitioner has received notice dated 23rd August, 1984 from the Mamlatdar and ALT, Daskroi while exercising the suo motu powers under Section 84-C of the Tenancy Act. Learned Advocate Mr.Patel, appearing for the petitioner has also relied upon the decision of this Court in case of Special Civil Application No. 2576 of 1989 (Coram : A.N.Divecha, J.) decided on 17th September, 1993 wherein, similar question has been examined by this Court in respect of the unreasonable delay in exercising the powers under Section 84-C by the Mamlatdar. The case referred aforesaid, wherein also period of 5 years has been considered unreasonable delay by this Court and therefore, according to the Advocate of the petitioner, the case of the petitioner is also covered by the said decision and therefore, the same is required to be allowed. Mr.Patel, learned advocate for the petitioner has also relied upon the recent decision of the Apex Court reported in 1997 (6) SCC 71, wherein the Apex Court has considered the question of unreasonable delay even the period of one and half year has held to be unreasonable while exercising the powers under Section 84-C of the Tenancy Act. In case before the Apex Court, transaction of sale deed of 1972 and the proceedings were initiated by the authority under Section -84-C after period of one and half years, was also considered to be unreasonable delay while exercising the powers by the authority.

#. Mr.I.M.Pandya, Learned AGP appearing on behalf of the respondent authority has submitted that unless and until the facts brought to the notice of the authority,the authority was not aware of such transaction and

therefore, there was no delay on the part of the authority which can be considered to be unreasonable in exercising the powers under Section 84-C of the Tenancy Act. Mr. Pandya, learned AGP has also submitted that on merits also, the fact remains that the petitioner is not an agriculturist and the transaction of the sale deed has been executed between the petitioner and the respondent No.2 to 4. Therefore, Section 63 of the Act has been clearly violated and authority has rightly exercised the powers under Section 84-C of the Tenancy Act.

#. I have considered the submission of learned advocates for the parties and according to my opinion, in the before this court, two aspect are required to be considered, of which, one is that the suo motu powers have been exercised by the Mamlatdar after period of five years and secondly during this period, the petitioner has spent huge amount and resources with a view to improve the land in question and cultivating the subject land from the date of purchase and the petitioner is maintaining his family on the basis of such cultivation of the land in question. One more aspect which requires consideration is that the petition has been filed by the petitioner in the year 1993 and till date the respondent authorities have not filed any reply challenging the averments made by the petitioner. In the present petition, interim relief has been granted initially by this Court on 1st December, 1993 and that interim relief is continued till date and during past also the land in question has remained with the petitioner from which the petitioner is cultivating the same and maintaining the family. Therefore, considering the decision of the Apex Court as referred to above, wherein even period of one and half year has been considered to be unreasonable delay in exercising the sue motu powers by the authority and in the present case, five years period have been taken by the authority in exercising the suo motu powers. Therefore, in the present case also, period of five years for initiating the proceedings, has to be considered to be unreasonable while exercising the powers. Similarly, in decision of this Court rendered in case of Special Civil Application No. 2576 of 1989 dated 17th September, 1993 [copy of the order has been annexed to the petition at page 27] wherein also similar period of five years has been considered by this Court as unreasonable period and order has been quashed and set aside by this Court only on the ground of unreasonable delay. Therefore, in the present the case, remand order has been passed by the Tribunal have no meaning on the contrary, the revision application is required to be allowed only on the ground of unreasonable delay but though the contention of delay

has been raised before the revisional authority, but the same has not been properly considered by the Tribunal. Therefore, according to my opinion, considering all these aspects of the matter, present petition is required to be allowed and the order passed by the Mamlatdar and ALT, Daskroi dated 21st September, 1989 passed by the Deputy Collector, Ahmedabad dated 27th March, 1991 and order passed by the Tribunal dated 18th October, 1993 are hereby quashed and set aside and rule is made absolute to the aforesaid extent. No order as to costs.

Date : 13-10-2000 [H.K.Rathod, J.]
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